

### **Rejections Under 35 U.S.C. § 112**

Claims 1-21 stand rejected under 35 U.S.C. § 112, first paragraph. Claims 1, 6, 17 and 21 have been amended to define embodiments which clearly operate according to the invention defined in the specification. These amendments were done to overcome the rejections under 35 U.S.C. § 112.

### **The Invention**

The present invention is a tamper-resistant bottle closure which includes a cap and a breakaway skirt connected by a plurality of frangible links and inhibits tampering with the fluid contents of the bottle. A stopping ledge extending outward from the bottle neck retains the breakaway skirt, thus breaking the frangible links when the cap is removed. The breakaway skirt includes a number of securing straps, and a plurality of security fins which further inhibit tampering with the closure. A second embodiment includes a plurality of inner skirts that alternately attach distal to and proximate from the frangible links. A third embodiment includes a first set of inner skirts extending around to a first stopping ledge and a second set of inner skirts extending around a second stopping ledge. A fourth embodiment includes an intermediate link interposed between the wing and the inner protuberance of the inner skirts. A fifth embodiment includes inner skirts which do not include wings extending around the stopping ledge. A sixth embodiment includes inner skirts having a blocking protrusion and a clamping protrusion. A seventh embodiment includes a connection strap extending between the cap and the breakaway skirt.

### **Rejections Under 35 U.S.C. § 102**

Claims 1-2 and 17-18 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,749,095 to rate (hereinafter "Rote"). This rejection is traversed as follows.

Rote discloses a tamper-indicating closure and package comprising a one-piece molded closure of plastic which threads onto a container (21) such that when the closure is unthreaded, a tamper-indicating band becomes separated from the lower end of the closure skirt. The tamper-indicating band is joined to the closure along the weakened frangible line. Circumferentially extending relatively rigid locking members (30) are supported on the inner surface of the closure by generally vertically extending flexible membranes (32) such that when the closure is threaded onto the container, the locking members move radially outwardly as they engage an annular bead (35) on the finish of the container causing the membranes to flex over the bead and bringing the locking members into engagement with the underside of the bead. When the closure is unthreaded from the container, the engagement of the locking members with the underside of the bead causes the membranes to be severed.

Rote does not disclose or suggest, among other things, the first and second inner skirt with wings as is now recited in claim 1.

Rote does not teach or suggest, among other things, the securing strap and intermediate link, now recited in claim 6.

Rote does not teach or suggest, among other things, the securing straps and inner and outer protuberances as is now recited in claim 14.

Rote also does not teach or suggest, among other things, the first and second protuberances as are now recited in claim 17.

Claims 1-5, 7-13 and 17-19 stand rejected under 35 U.S.C. § 102(b) as being anticipated by EP 541,466 (hereinafter, the "EP reference"). This rejection is traversed as follows.

The EP reference discloses a cap which has an integrally threaded belt (15). The free end of the cap is connected by breakable bars (7), to an anti-tamper ring (3). The anti-tamper ring is extended at its free end by a plurality of jointed tabs (10) which are folded against the lower surface of the ring in the used position of the cap, and each has a surface which can bear against the backing ring (9) on the neck of the receptacle. The anti-tamper ring (3) also includes holes (19) each of which receives a tab (17). These tabs form a rim

(16) intended to bear against the edge (20) of the hole (19) situated on the side opposite its end for attachment to the cap.

The EP reference does not anticipate or render obvious claim 1, as amended, or suggest wings as are shown for example, at numeral 40 in Fig. 3 of the application.

The EP reference does not anticipate or render obvious claim 6, as amended, not only because it does not teach or suggest wings, but it also does not teach or suggest securing straps (42) and/or intermediate links.

Claim 14, as amended, is not anticipated or rendered obvious by the EP reference because that reference does not teach or suggest the securing strap or the inner or outer protuberances.

Claim 17, as amended, is not anticipated or rendered obvious by the EP reference because the EP reference does not, among other things, teach or suggest wings or an inner and outer protuberance or a securing well and flange.

In establishing a prima facie case of anticipation under 35 USC § 102, the Examiner must find every element of the applicant's claim in a single reference; other references may be used only to interpret the allegedly anticipated reference. Studiengesellschaft Kohle, m.b.H. v. Dart Industries, Inc., 726 F. 2d. 724, 220 USPQ 841 (Fed. Cir. 1984). This idea was similarly upheld in Scripps Clinic & Research Foundation v. Genentech, Inc., 927 F. 2d. 1565, 18 USPQ 2d. 1001, 18 USPQ 2d. 1896 (Fed. Cir. 1991), wherein the Court held "that invalidity for anticipation requires that all the elements and limitations of the claims be found in a single prior art reference."

In establishing a prima facie case of obviousness under 35 U.S.C. 103, it is incumbent upon the Examiner to provide a reason why one having ordinary skill in the art would have been led to modify a prior art reference to arrive at the claimed invention. The requisite motivation must stem from some teaching, suggestion or interest in the prior art as a whole or from knowledge generally available to one having ordinary skill in the art. See Uniroyal, Inc. v. Rudkin Riley, Corp., 837 Fed. 2d. 1044, 5 USPQ 2d. 1434 (Fed. Cir. 1988); Ashland Oil, Inc. v. Delta Resin And Refractories, Inc., 776 F. 2d. 281, 227 USPQ 657 (Fed. Cir. 1985).

Where claimed subject matter has been rejected as obvious in view of a prior art reference, a proper analysis under § 103 requires consideration of two factors; (1) whether the prior art would have suggested to those of ordinary skill in the art that they should make the claimed composite or device or carry out the claimed process; and (2) whether the prior art would also have revealed that in so making or carrying out the invention those of ordinary skill would have a reasonable expectation of success. See In re Dow Chemical Company 837 Fed. 2d. 469,473, 5 USPQ 2d. 1529, 1531 (Fed. Cir. 1988). both the suggestion and the reasonable expectation of success must be found in the prior art, not in the applicant's disclosure.

It is applicant's position that such suggestion and/or reasonable expectation of success could not be found in the cited reference.

The Patent and Trademark Office Board of Patent Appeal and Interferences stated the following in Ex parte Clapp, 227 USPQ 972 (1985), at page 973:

"Presuming arguendo that references show the elements or concepts urged by the Examiner, the Examiner has presented no line of reasoning, and we know of none, as to why the artist when viewing only the collective teachings of the references would have found it obvious to selectively pick and choose various elements and/or concepts from the several references relied on to arrive at the claimed invention. In the instant application, the Examiner has done little more than cite references to show that one or more elements or some combinations thereof, when each is viewed in a vacuum, is known. The claimed invention, however, is clearly directed to the combination of elements. That is to say, applicant does not claim that he has invented one or more new elements but has presented claims to a new combination of elements. To support the conclusion of the claimed combination is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed combination where the Examiner must present a convincing line of reasoning as to why the artist would have found the claimed invention to have been obvious in light of the teaching of the references."

With the above directives, consideration must be given as to whether the reference in the manner set forth in the Office Action is proper to render the applicant's invention obvious in view thereof.

As set forth hereinabove, it is applicant's contention that the reference does not suggest, nor does it teach the combination as set forth in now amended Claim 1, as is evident from the plurality of differences between applicant's invention and the cited art set forth hereinabove. Again, the reference must teach the alleged combination to render applicant's invention obvious under 35 U.S.C. 103. The CAFC in the recent case of In re Fine, 5 USPQ 2d. 1596, 1988 stated beginning at page 1599 that:

"Obviousness is tested by "what the combined teaching of the references would have suggested to those of ordinary skill in the art." In re Keller, 642 F. 2d. 413, 425, 208 USPQ 71, 881 (CCPA 1981). "But it cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination." ACS Hospital Sys., 732 F. 2d. at 1577, 221 USPQ at 933. "Teachings of references can be combined only if there is some suggestion or incentive to do so." *Id.* Here, the prior art contains none.

While the present invention has been described in connection with the preferred embodiments of the various figures, it is to be understood that other similar embodiments may be used or modifications and additions may be made to the described embodiment for performing the same function of the present invention without deviating therefrom. Therefore, the present invention should not be limited to any single embodiment, but rather construed in breadth and scope in accordance with the recitation of the appended claims.

Respectfully submitted at Canton, Ohio this \_\_\_\_ day of \_\_\_\_\_, 2000.



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